

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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State of Nevada,

Case No. 2:24-cv-02114-JAD-DJA

Plaintiff,

Order

v.

Mr. Clayton-M. Bernard-Ex,

Defendant.

Pro se Defendant Mr. Clayton-M. Bernard-Ex filed an application to proceed *in forma pauperis*. (ECF No. 1). However, Defendant's application is missing certain information. The Court thus denies the application without prejudice.

I. Discussion.

Under 28 U.S.C. § 1915(a)(1), a party may bring a civil action "without prepayment of fees or security therefor" if the party submits a financial affidavit that demonstrates the party "is unable to pay such fees or give security therefor." The Ninth Circuit has recognized that "there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn [*in forma pauperis*] status." *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to qualify for a waiver of costs and fees, but he must demonstrate that because of his poverty he cannot pay those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

The applicant's affidavit must state the facts regarding the individual's poverty "with some particularity, definiteness and certainty." *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have the discretion to make a factual inquiry into a party's financial status and to deny a request to proceed *in forma pauperis*. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district court did not abuse its discretion by denying the

1 plaintiff's request to proceed *in forma pauperis* because he "failed to verify his poverty
2 adequately"). "Such affidavit must include a complete statement of the plaintiff's personal
3 assets." *Harper v. San Diego City Admin. Bldg.*, No. 16-cv-00768 AJB (BLM), 2016 U.S. Dist.
4 LEXIS 192145, at *1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds
5 for denying an *in forma pauperis* application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-44
6 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on *in forma*
7 *pauperis* application).

8 On his application, Defendant claims to make no money from any source, have no bills,
9 have no property of any kind, have no dependents, and to have no debts. Almost the entirety of
10 the application is blank. Defendant does not provide any detail in the application regarding how
11 he lives considering his claim to have no money and no bills. The Court finds that Defendant has
12 omitted information from the application. As a result, the Court cannot determine whether
13 Defendant qualifies for *in forma pauperis* status.

14 The Court will give Defendant one opportunity to file a complete *in forma pauperis*
15 application. The Court further orders that Defendant may not respond with a zero or "not
16 applicable" in response to any question without providing an explanation for each of the
17 questions. Defendant also may not leave any questions blank. Defendant must describe each
18 source of money that he receives, state the amount he received, and what he expects to receive in
19 the future.

20 The Court denies Defendant's *in forma pauperis* application without prejudice. The Court
21 gives Defendant 30 days to file an updated application. Defendant must fully answer all
22 applicable questions and check all applicable boxes. Defendant may alternatively pay the filing
23 fee in full. Since the Court denies Defendant's application, it does not screen the complaint at
24 this time.

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26 **IT IS THEREFORE ORDERED** that Defendant's application to proceed *in forma*
27 *pauperis* (ECF No. 1) is **denied without prejudice**.
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1 **IT IS FURTHER ORDERED** that Defendant has until **December 16, 2024** to file an
2 updated application to proceed *in forma pauperis* as specified in this order or pay the filing fee.
3 **Failure to timely comply with this order may result in a recommendation to the district**
4 **judge that this case be dismissed.**

5 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to send
6 Defendant a copy of this order and of the Long Form application to proceed *in forma pauperis*
7 and its instructions.¹

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9 DATED: November 15, 2024

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12 DANIEL J. ALBREGTS
13 UNITED STATES MAGISTRATE JUDGE
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27 _____
28 ¹ This form and its instructions can also be found at <https://www.nvd.uscourts.gov/court-information/forms/> under Code AO 239.